

Joseph Rebein, (Admitted *Pro Hac Vice*)
Andrew Carpenter (Admitted *Pro Hac Vice*)
Brent Dwerlkotte (Admitted *Pro Hac Vice*)
SHOOK, HARDY & BACON L.L.P.
2555 Grand Boulevard
Kansas City, Missouri 64108
Telephone: 816-474-6550
Facsimile: 816-421-5547
jrebein@shb.com
acarpenter@shb.com
dbdwerlkotte@shb.com

Tammy B. Webb, (Admitted *Pro Hac Vice*)
John K. Sherk, III, (Admitted *Pro Hac Vice*)
SHOOK, HARDY & BACON L.L.P.
One Montgomery, Suite 2700
San Francisco, California 94104
Telephone: 415-544-1900
Facsimile: 415-391-0281
jsherk@shb.com
tbwebb@shb.com

Attorneys for Defendant
Union Pacific Railroad Company

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

JAMES PAUL MOONEY; LAZY
COYOTE RV VILLAGE, LLC, on behalf
of themselves and all others similarly
situated,

Plaintiffs,

v.

UNION PACIFIC RAILROAD
COMPANY, successor to Southern Pacific
Transportation Company; SFPP, L.P.
(formerly known as Santa Fe Pipelines, Inc.,
formerly known as Southern Pacific
Pipelines, Inc.); KINDER MORGAN
OPERATING L.P. "D," and KINDER
MORGAN G.P., INC.,

Defendants.

Lead Case No. 2:15-cv-01092-DGC
(consolidated with Case No. 2:15-cv-
01380-DGC)

**DEFENDANT UNION PACIFIC
RAILROAD COMPANY'S
RESPONSE IN OPPOSITION TO
PLAINTIFFS' MOTION TO
VACATE AND TEMPORARILY
SUSPEND ENTRY OF COURT'S
FEBRUARY 21, 2017**

1 Union Pacific Railroad Company (“Union Pacific”) respectfully requests that the
2 Court deny Plaintiffs’ Motion to Vacate and Temporarily Suspend Entry of the court’s
3 February 21, 2017 Order. (Doc. # 264).

4 Union Pacific objects to Plaintiffs’ request to vacate or hold in abeyance the Court’s
5 February 21, 2017 Order. Plaintiffs cite no authority for holding the Court’s Order in
6 abeyance once it has been entered and docketed. *Cf. Briseno v. ConAgra Foods, Inc.*, No. 15-
7 55727 (9th Cir. Mar. 2, 2017) (staying issuance of mandate under Fed. R. App. P.
8 41(d)(2)(A) pending application for writ of certiorari). Plaintiffs have not even attempted to
9 meet the high threshold for rescinding, reconsidering, or modifying the Court’s Order.
10 Plaintiffs also have not articulated an intervening change of controlling law, the availability
11 of new evidence, or the need to correct a clear error or prevent manifest injustice. *See Sony*
12 *Computer Entertainment Am. v. Filipiak*, 406 F.Supp.2d 1068, 1075 (N.D. Cal. 2005)
13 (describing situations where Court may exercise inherent equitable powers to vacate or
14 modify an interlocutory order).

15 There is no reason to believe that any action by this Court is necessary to avoid
16 “piecemeal” or “repetitive arguments” to the Ninth Circuit. Plaintiffs are perfectly capable of
17 filing a succinct Rule 23(f) petition on the Rule 23(b)(2) and (b)(3) issues resolved by this
18 Court’s February 21, 2017 Order, and then filing a second Rule 23(f) petition addressing any
19 remaining issues once this Court enters an order resolving the pending Rule 23(c)(4)
20 questions.

1 Dated: March 3, 2017

Respectfully submitted,

s/ Andrew Carpenter

2 Joseph Rebein, (Admitted *Pro Hac Vice*)

Andrew Carpenter (Admitted *Pro Hac Vice*)

3 Brent Dwerlkotte (Admitted *Pro Hac Vice*)

SHOOK, HARDY & BACON L.L.P.

4 2555 Grand Boulevard

Kansas City, Missouri 64108

5 Telephone: 816-474-6550

Facsimile: 816-421-5547

6 jrebein@shb.com

acarpenter@shb.com

7 dbdwerlkotte@shb.com

8 Tammy B. Webb, (Admitted *Pro Hac Vice*)

John K. Sherk, III, (Admitted *Pro Hac Vice*)

9 SHOOK, HARDY & BACON L.L.P.

10 One Montgomery, Suite 2700

San Francisco, California 94104

11 Telephone: 415-544-1900

Facsimile: 415-391-0281

12 jsherk@shb.com

tbwebb@shb.com

13 Attorneys for Defendant

14 Union Pacific Railroad Company

CERTIFICATE OF SERVICE

I hereby certify that on March 3, 2017, the following document was electronically filed with the Clerk of the Court and served using the CM/ECF system, which will send notification of such filing to the attorney(s) of record at their listed email address(es).

- DEFENDANT UNION PACIFIC RAILROAD COMPANY'S RESPONSE IN OPPOSITION TO PLAINTIFFS' MOTION TO VACATE AND TEMPORARILY SUSPEND ENTRY OF COURT'S FEBRUARY 21, 2017 ORDER.

/s/ ANDREW CARPENTER
ANDREW CARPENTER